Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	**WC Docket No. 02-112**
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	)	

WORLDCOM COMMENTS

WorldCom, Inc. (WorldCom) hereby submits its comments on the Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding. In the Notice, the Commission seeks comment regarding the sunset of the statutory requirements under section 272 imposed on Bell Operating Companies (BOCs) when they provide in-region, interLATA telecommunications services through separate corporate affiliates.

I. The Commission Should Retain the Section 272 Safeguards as Long as the BOCs Remain Dominant Carriers

As the Commission has explained, "Congress recognized that the local exchange market will not be fully competitive upon its opening."[1] Because the local exchange market would not be "fully competitive," "BOC entry into in-region interLATA services raises issues for competition and consumers" even after a BOC has satisfied the requirements of section 271(d)(3).[2] The section 272 safeguards were designed, in the absence of full

[1] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, released December 24, 1996 (Non-Accounting Safeguards Order) at ¶ 9.
[2] Non-Accounting Safeguards Order at ¶ 10.

competition in the local exchange marketplace, to prohibit anticompetitive discrimination and cost-shifting by the BOCs.[3]

In light of the Commission's recognition that the section 272 safeguards were designed to guard against the risks to competition and consumers attributable to a local market that was not "fully competitive," the Commission should retain the section 272 safeguards as long as the BOC possesses market power. Specifically, the Commission should adopt, pursuant to its section 272(f)(1) authority, a rule of general applicability providing that the section 272 safeguards shall apply as long as the BOC remains classified as a dominant carrier in the provision of any interstate services in the state in question. As long as the BOC remains dominant, i.e., continues to possess market power, the section 272 safeguards remain necessary to constrain the BOC's ability to discriminate against its rivals in the interLATA market and to engage in cost-shifting. For example, the section 272 safeguards act to constrain a BOC with market power from "degrad[ing] services and facilities furnished to its affiliate's rivals, in order to deprive those rivals of efficiencies that its affiliate enjoys."[4]

Continued application of section 272 safeguards to BOCs regulated as dominant carriers is consistent with the Commission's twenty-year history of imposing separate affiliate requirements on dominant LEC participants in the interLATA market. Under rules first adopted in the 1984 Fifth Competitive Carrier Order, independent LECs must provide interexchange services through a separate affiliate in order to be treated as nondominant in the provision of interexchange services.[5] Given that the Commission has found that the

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[3] Non-Accounting Safeguards Order at ¶ 9.
[4] Non-Accounting Safeguards Order at ¶ 11.
[5] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations

Competitive Carrier affiliate rules are necessary to deter dominant independent LECs from engaging in anticompetitive conduct, and given that the Commission has found that the independent LECs "are less likely to be able to engage in anticompetitive conduct than the BOCs,"[6] the Commission should find that the stricter section 272 separate affiliate requirements remain necessary as long as the BOCs remain dominant.

In determining whether a BOC should continue to be subject to the section 272 requirements, the Commission should also give considerable weight to the recommendations of state commissions. State commission input is not only consistent with the role assigned to the state commissions by section 271(d)(2)(B), but is essential because the section 272 safeguards are equally applicable to both interstate and intrastate services.[7] If a BOC were able to discriminate against its rivals, such discrimination would affect both interstate and intrastate interLATA competition. Similarly, any misallocated costs of providing interLATA services would flow through the separations process to both the interstate and intrastate rate bases.

Therefore, Fifth Report and Order, 98 FCC 2d 1191, 1198 (1984) (Fifth Competitive Carrier Order); Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 15756, 15849 (1997) (Interexchange Order).

[6] Interexchange Order, 12 FCC Rcd at 15854.

[7] Non-Accounting Safeguards Order at ¶ 30.

II. There is No Reasoned Basis for Allowing Verizon-New York's Section 272 Requirements to Sunset

As the Commission discusses in the Notice, Verizon-New York's section 272 requirements will sunset in December of 2002 unless extended by the Commission. If that deadline does not provide sufficient time for the Commission to complete this proceeding and adopt the general rule outlined above, the Commission should, at a minimum, extend Verizon's section 272 safeguards for an additional three-year period. Extending the 272 safeguards for an interim period would allow the Commission and the public to gain additional experience with BOC provision of interLATA services before deciding what safeguards might be appropriate in the future. To date, the public has been able to evaluate only one unredacted section 272 audit report, and that report covers only the first year of Verizon's interLATA operations.

Under no circumstances should the Commission permit Verizon New York's section 272 safeguards to sunset in December, 2002. Although the number of CLEC-controlled lines in New York has increased since Verizon was granted section 271 authority in 1999, marketplace evidence demonstrates that Verizon-New York continues to possess the ability and incentive to discriminate against its rivals in the interLATA market and to engage in cost-shifting.

First, Verizon's rivals in the interLATA market remain dependent on Verizon facilities in order to reach their customers. Not only do Commission data show that Verizon continues to control 75 percent of the access lines in New York,[8] but the majority of the

[8] July, 2002 Local Competition Report, Table 6.

lines attributed to CLECs rely on Verizon facilities. Commission data show that over 50 percent of "CLEC" lines are either resold ILEC local service or UNE-P.[9]

Moreover, the New York PSC recently found that Verizon remains dominant even in the provision of special access services in the New York metropolitan area – the most competitive sector of the most competitive access market in the nation.[10] In its comprehensive review of special access competition in New York, the New York PSC found that in LATA 132 Verizon has 7,364 buildings on its fiber network compared to less than 1,000 for most competing carriers.[11] This disparity in buildings served by fiber is magnified by the fact that Verizon's ubiquitous copper loops allow it to provision DS-1, voice grade, and other low-speed special access services to thousands of other special access customer locations that competitors' networks do not reach.[12]

Because Verizon's interLATA competitors remain dependent on Verizon's facilities to reach their customers, Verizon continues to have the ability to discriminate against those competitors. For example, Verizon's control over the PIC change process for the vast majority of residential and small business lines in New York gives it the ability to discriminate against competitors in the residential and small business market. Similarly, Verizon's control over the special access facilities that its rivals need to reach the vast majority of business customer locations gives it the ability to discriminate against competitors in the larger business market.

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[9] July 2002, Local Competition Report (compare Table 4 – CLECs with 4.0 million resale lines, 5.8 million UNE-P lines – with Table 3 -- CLECs with 19.6 million total lines).
[10] New York Public Service Commission, Opinion and Order Modifying Special Services Guidelines for Verizon New York, Inc., Conforming Tariff and Requiring Additional Performance Reporting, Case Nos. 00-C-2051, 92-C-0665 at 9 (June 15, 2001) (New York Special Services Order).
[11] Id. at 7.
[12] Id. at 7-8.

These concerns are well founded. Even though the section 272 safeguards have prevented the most egregious exercises of Verizon's market power, there is clear evidence that Verizon has still misused its market power to favor its own long distance operations. The Verizon section 272(d) audit report shows that Verizon processed PIC changes more rapidly for its interLATA affiliates than for unaffiliated carriers, and also shows that Verizon's special access provisioning intervals were shorter for Verizon's interLATA affiliates than for unaffiliated carriers.[13] Moreover, Verizon's ability to discriminate in favor of its own customers is confirmed by the New York PSC's finding that "Verizon treats other carriers less favorably than its own end users" in the provisioning of special access services.[14]

Allowing Verizon-New York's section 272 requirements to sunset in December, 2002 would open the floodgates to more-frequent and less-detectable exercises of Verizon's market power. First, if Verizon were permitted to provide both access and interLATA services on an integrated basis, it would be far more difficult to detect and deter discrimination in the provision of access circuits. By requiring the RBOCs' interexchange operations to use the same types of access facilities as competitors, and to procure those facilities in the same manner, the section 272(b)(5) separate affiliate requirement facilitates comparison of the rates, terms, and conditions on which those facilities are provided. Furthermore, the separate affiliate requirement avoids the need to allocate costs between

[13] CC Docket No. 96-150, PricewaterhouseCoopers, Report of Independent Accountants on Applying Agreed-Upon Procedures, attachment to letter from PricewaterhouseCoopers, LLP to William F. Caton, FCC, February 6, 2002 (Verizon Audit Report), Appendix A at 34-37.

[14] New York Special Services Order at 10.

"local" and "interexchange" operations, thus reducing the risk of improper allocation of costs.[15]

Verizon's ability to leverage its bottleneck control is further limited by section 272(c)(1). Not only does section 272(c)(1) represent "a more stringent standard" than the "unjust or unreasonable" standard found in section 202,[16] but section 272(c)(1)'s protections extend to key non-common carrier services such as billing and collection.[17] The 272(c)(1) ban on discrimination is, in turn, buttressed by the section 272(d) audit requirement and the section 272(b)(5) requirement that all transactions be reduced to writing, i.e., posted on the BOC's website, and be conducted on an "arm's length basis."

III. The Section 272 Safeguards Are Not Burdensome

In the Notice, the Commission states that it is particularly interested in the costs, on an ongoing basis, of continued application of the section 272 safeguards.[18] Those costs are minimal, and are far outweighed by the benefits to competition.

In the Non-Accounting Safeguards Order, the Commission emphasized that the separate affiliate requirements "do[] not impose requirements on the BOCs that will unfairly handicap them in their ability to compete."[19] Certainly, there is no evidence that the Section 272 safeguards have handicapped the RBOCs in any way. The RBOCs have gained market share at a far greater rate than any previous new entrant in the long distance market. Verizon, for example, claims to have achieved a 30 percent share of the market in New

[15] Id. at ¶ 159.
[16] Non-Accounting Safeguards Order at ¶ 197.
[17] Id. at ¶ 217.
[18] Notice at ¶ 21.
[19] Non-Accounting Safeguards Order at ¶ 10.

York barely two years after receiving interLATA authority;[20] by contrast, Commission data show that MCI did not achieve a 20 percent market share until 1994, a decade after divestiture, and has never achieved a 30 percent market share.[21]

In light of the RBOCs' rapid market share gains, it should hardly be surprising that no independent analyst has ever cited the Section 272 safeguards as placing the RBOCs at a cost disadvantage or otherwise impairing the RBOCs' ability to compete in the interLATA market. Clearly, the costs of administering the separate affiliate, transaction posting, and audit requirements are insignificant, especially since the RBOCs are increasingly able to spread those costs across a growing number of states and lines.

Similarly insignificant are any "efficiency losses" attributable to the separate affiliate requirement. The Commission's rules already permit the BOC and its Section 272 affiliate to share a broad range of services and facilities, including sales, marketing, and administrative services.[22] Indeed, the degree of sharing between the BOCs and their Section 272 affiliates is so extensive that the section 272 affiliates are essentially "virtual" companies with few employees of their own. For example, Verizon-New York's section 272 affiliates were able to gain a 30 percent share of the interLATA market with only about 800 employees,[23] in large part because the Verizon BOCs or other Verizon affiliates perform virtually all sales, marketing, and administrative services on behalf of the section 272 affiliates.[24]

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[20] http://investor.verizon.com/news/VZ/2002-07-31_X668027.html

[21] Statistics of Communications Common Carriers, 2000/2001 Edition, Table 1.5.

[22] Non-Accounting Safeguards Order at ¶¶ 178-183. WorldCom continues to believe that the degree of sharing permitted by the Non-Accounting Safeguards Order is inconsistent with the requirements of section 272(b)(1) and 272(b)(3).

[23] Verizon Audit Report, Appendix A at 3, ¶ 3.

[24] Verizon Audit Report, Appendix at 4, ¶ 4.

The most significant form of sharing between the BOCs and their section 272 affiliates involves sales and marketing services. Not only does the sharing of sales and marketing services allow the BOC's section 272 affiliates to gain efficiencies but, more importantly, the sharing of sales and marketing services allows the section 272 affiliate to leverage the BOC's continued control over the vast majority of access lines. If, for example, a customer contacts a Verizon BOC's customer service center to change a telephone number, the customer service representative will, in all likelihood, try to sell the section 272 affiliate's services.[25] The Verizon BOC performs, on behalf of the Verizon section 272 affiliates, "sales, ordering, customer inquiry, customer care, training, verification, and other related services;"[26] "inbound and outbound telemarketing support for targeted and untargeted Consumer Marketing campaigns;"[27] "welcome calling, fulfillment, internet marketing, verification, credit checking, system support, and other related services in connection with sales and marketing of business long distance services;"[28] and an array of other sales and marketing functions. The Verizon section 272 affiliates do not employ their own sales managers.[29]

The only facilities and services that the BOCs and their section 272 affiliates are prohibited from sharing are transmission and switching facilities and the property on which they are located, and associated operating, installation, and maintenance services. As the

[25] Verizon Audit Report, Appendix A at 29, ¶ 8.
[26] http://www.verizonld.com/regnotices/detail.cfm?ContractID=106&OrgID=1
[27] http://www.verizonld.com/regnotices/detail.cfm?ContractID=151
[28] http://www.verizonld.com/regnotices/detail.cfm?ContractID=216
[29] Verizon Audit Report, Appendix A at 30, ¶ 9.

Commission has consistently found, limits on the sharing of switching and transmission facilities do not cause any material efficiency losses.[30]

IV. Special Access Metrics and Section 272 Safeguards are Complementary, not Substitutes

In the Notice, the Commission asks whether the adoption of measures considered in the *Special Access* proceeding would provide an adequate safeguard, should the section 272 safeguards sunset.[31]

The Commission should act promptly to adopt the Joint Competitive Industry Group's (JCIG's) proposal for comprehensive special access performance measures, performance requirements, and remedies. As JCIG has demonstrated, adoption of the JCIG proposal is necessary to address an ongoing pattern of unacceptable and discrminatory performance by the incumbent LECs with respect to the provisioning and maintenance of the interstate special access services on which competitors rely to serve their end-user customers.

The JCIG measures and performance requirements are not a substitute for section 272 safeguards. As an initial matter, the JCIG proposals provide no information about PIC-change performance. More generally, the JCIG proposals are designed solely to address declines in ILEC special access provisioning performance, not to address Congress's broader concerns about BOC discrimination in the provision of "goods, services, facilities,

[30] Interexchange Order, 12 FCC Rcd at 15851-15852 ("The affiliate can contract for use of the LEC's transmission and switching facilities at tariffed rates or on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251, and thereby continue to benefit from economies of scope.")
[31] Notice at ¶ 26.

and information" or "in the establishment of standards,"[32] or to ensure that BOC interexchange operations must obtain access services in the same manner as unaffiliated carriers. Furthermore, the JCIG proposals do not address Congress's concerns about the potential for the BOCs to misallocate costs.

However, the JCIG proposals and section 272 safeguards are complementary. First, by requiring the BOC's interLATA operations to order access services in the same manner as unaffiliated carriers, section 272's separate affiliate requirement facilitates the type of comparative performance measurements that have been proposed by JCIG and that are required to enforce section 272(e)(1), which does not sunset. As the Commission found in the Non-Accounting Safeguards Order, the nondiscrimination safeguards of section 272(e) "would offer little protection" if the BOC and its interLATA operations were permitted to own transmission and switching facilities jointly.[33]

Second, the Commission may find that the JCIG metrics fulfill the BOCs' performance measurement obligations implementing section 272 of the Act, thereby eliminating the need for a separate section 272 reporting requirement. The JCIG proposal would provide a uniform and reliable set of metrics for section 272 purposes; not only is each RBOC that has obtained section 271 authority currently using a different set of metrics, but the RBOCs have not provided well-defined business rules for the metrics that they are using. Moreover, comparative provisioning data is provided to the Commission only in the section 272 audit reports, not on a regular basis. Not only is the data in the audit reports not current, but the BOCs have sought to withhold the data from public inspection. For

[32] 47 U.S.C. § 272(c)(1).
[33] Non-Accounting Safeguards Order at ¶ 160.

example, comparative provisioning data for Verizon for 2000 were not available to the public until Verizon finally filed an unredacted version of its section 272 audit report in February, 2002. The next set of comparative provisioning data for Verizon, covering 2001 and 2002, will not be available to the public until mid-2003 at the earliest, when the next Verizon section 272 audit report is scheduled to be filed with the Commission.

V. Conclusion

For the reasons stated herein, the Commission should retain the section 272 safeguards as long as the BOCs remain dominant carriers.

Respectfully submitted,
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